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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/064,945    05/20/93    BARBERG

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D    B560.120002  
EXAMINER  
NGUYEN, J

ART UNIT    PAPER NUMBER

11

2405  
DATE MAILED:    07/26/94

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined    ☒ Responsive to communication filed on June 27, 1994 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), \_\_\_\_\_ days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

**Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:**

- |                                                                                         |                                                                                   |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.                 | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152.       |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474.     | 6. <input type="checkbox"/> _____                                                 |

**Part II SUMMARY OF ACTION**

1. ☒ Claims 1-17 are pending in the application.  
Of the above, claims 3-11 are withdrawn from consideration.
2. ☐ Claims \_\_\_\_\_ have been cancelled.
3. ☐ Claims \_\_\_\_\_ are allowed.
4. ☒ Claims 1, 2, and 12-17 are rejected.
5. ☐ Claims \_\_\_\_\_ are objected to.
6. ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed \_\_\_\_\_, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

**EXAMINER'S ACTION**

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Claims 3-11 stand withdrawn from further consideration by the examiner, 37 C.F.R. § 1.142(b) as being drawn to a nonelected species. Election was made **without** traverse in Paper No. 7.

It should be noted that the attempted amendments on pages 6 and 9 of the specification could not be made.

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on June 27, 1994 have been approved.

The drawings are objected to under 37 C.F.R. § 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "overlapping edge" of claim 14 must be shown or the feature cancelled from the claim. No new matter should be entered.

Applicant is required to submit a proposed drawing correction in response to this Office action. However, correction of the noted defect can be deferred until the application is allowed by the examiner.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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Claims 1, 2, 12-16 are rejected under 35 U.S.C. § 103 as being unpatentable over Chong in view of Harrill.

Chong discloses an apparatus having a bucket 16 with a sidewall 20 supporting a spool comprising a bottom 26 and an integral column 30. Note the "foot plate" 10 and the retainer 32. The spool is provided with a ball bearing turntable 28 and rests on the base of the bucket. What is not disclosed is a top with a second access hole connected to the spool and mounting holes in the foot plate. Harrill discloses a similar container for electrical cord in which a spool 10 is rotatably mounted inside a container 12. The spool has a top 38 with an access hole through which the cord end 86 emerges. A means 60 for rotating the spool is provided. It would have been obvious to a person having ordinary skill in the art to provide the device of Chong with a top having an access hole and a means for rotating as taught by Harrill to contain the windings as is well known in the art, so that the inner end of the flexible member such as an electrical cord can be accessed, and so that the spool can be manually rotated, respectively. The mounting holes in element 64 of Harrill should be noted. It would have been obvious to a person having ordinary skill in the art to provide the foot plate of Chong with mounting holes which are old and well known in the art and also shown by Harrill so that the apparatus can be secured. That the hole locations are spaced

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about the perimeter would have been an obvious matter of design choice to a person having ordinary skill in the art based on factors such as preference and the size and shape of the foot plate.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 17 is rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Harrill.

Claims 1, 2, and 17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 19, 22, and 24 of copending application Serial No. 08/049,733. Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of the instant claims are encompassed in the above claims of the copending application.

This is a *provisional* obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The obviousness-type double patenting rejection is a judicially established doctrine based upon public policy and is

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primarily intended to prevent prolongation of the patent term by prohibiting claims in a second patent not patentably distinct from claims in a first patent. *In re Vogel*, 164 USPQ 619 (CCPA 1970). A timely filed terminal disclaimer in compliance with 37 C.F.R. § 1.321(b) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 C.F.R. § 1.78(d).

Applicant's arguments with respect to claim 1 have been considered but are deemed to be moot in view of the new grounds of rejection.

The new limitation in claim 1, "resting upon the base of the container", and new claims 12-17 necessitated the new grounds of rejection.

Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Nguyen whose telephone number is (703) 308-2689.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0771.



Daniel P. Stodola  
Supervisory Patent Examiner  
Group 240



JN

July 15, 1994